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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,918	01/11/2002	Ramesh Pendakur	42390P11552	7242
8791 7590 03/17/2008 BLAKELY SOKOLOFF TAYLOR & ZAFMAN 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040				
EXAMINER				
LL GUANG W				
ART UNIT		PAPER NUMBER		
2146				
MAIL DATE		DELIVERY MODE		
03/17/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/043,918

**Applicant(s)**

PENDAKUR, RAMESH

**Examiner**

Guang Li

**Art Unit**

2146

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5, 16 and 19-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 16 and 19-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date 12/12/2007.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application.
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. It is hereby acknowledged that the following papers have been received and placed of record in the file: Amendment date 12/12/2007.
2. Claims 1-3, 5, 16 and 19-27 are presented for examination.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-3, 5, 16 and 19-27 have been considered but are moot in view of the new ground(s) of rejection.

### ***Information Disclosure Statement***

4. As required by M.P.E.P. 609(C), the applicant's submissions of the Information Disclosure Statements dated 12/12/2007 is acknowledged by the examiner and the cited references have been considered in the examination of the claims now pending. As required by M.P.E.P 609 C(2), a copy of the PTOL-1449 initialed.

### ***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 16 and 24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. As the specification discloses (¶[0020]), "Moreover, the present invention may also be downloaded as a computer program product, wherein the program may be transferred from a remote computer to a requesting computer by way of data signals embodied in a carrier wave or other propagation medium via a communication link (e.g., a modem or network connection)"

Computer program product embodied in a carrier wave or other propagation medium is non-statutory subject matter. The transmission media are forms of energy, per se, and thus currently not believed to fall within a statutory category.

7. Claim 24 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed invention of an article does not meet one of the four categories of invention and is not statutory. Article is just a document can be done in software. Specifically, an article is not a series of steps or acts and thus is not a process. An article is not a physical article or object and as such is not a machine or manufacture. An article is not a combination of substances and therefore not a composition of matter.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1, 16 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Claims 1, 16 and 24 recite the limitation "receiving and/or consuming" and "automated observation and/or user-contributed observation" in lines 11 and 13. There is insufficient antecedent basis for this limitation in the claim. It is vague and indefinite whether the present invention claimed both receiving and consuming of the content or

just one of receiving or consuming of content. It is same as automated observation and/or user-contributed observation.

11. Claims 1, 16 and 24 recite the limitation "the user data including one or more of user interest level relate to content" in line 10. There is insufficient antecedent basis of this limitation in the claim. It is unclear the present invention claimed **one of more of user interest level relating to content, user timing preferences receiving , and observational profile**, or one of more of **each** of user interest level relating to content, one of more of **each** user timing preferences receiving and consuming of content , and one of more of **each** of observational profile.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claims 1-3, 5, 16 and 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bookman (US 2003/0050929 A1) in view of Alessi et al. (US 7,058,027) and further in view of Ellis et al (US 2004/0117831 A1).
15. Regarding 1-3, 5, 16 and 19-27, Bookman teaches a system/method comprising:
- receiving content from one or more content sources; (150; 700)
  - distributing metadata dictionary to a plurality of network nodes, wherein the metadata dictionary comprises content descriptors; (¶[0091 ], [0106], [0113])
  - receiving subscription information from the plurality of network nodes; (¶[0043])
  - aggregating the subscription information to form a rating survey including user data having one or more of user preferences, user needs, and user interest levels, wherein the rating survey is to maximize allocation of bandwidth; (¶[0037], [0077], [0079], [0093])
  - distributing the aggregated content stream to a plurality of filtering network nodes, wherein the aggregated content stream is filtered via filtering hubs located at the plurality of filtering network nodes; (710; "Categorizer")
  - generating a plurality of user profiles comprising the plurality of subscription information; associating the content descriptors with the plurality of user profiles; saving the user profiles; generating a plurality of personalized content streams based on the plurality of user profiles by dividing the aggregated content stream into the plurality of personalized content streams; and providing the plurality of personalized content streams to the plurality of receiving network nodes. (¶[0047])

- wherein the generating the plurality of personalized content streams comprises filtering the aggregated content stream by comparing the aggregated content stream with the plurality of user profiles. (§§(0047))
- providing the plurality of personalized content streams to the plurality of corresponding users. (§§(0047))
- wherein the subscription information comprises a plurality of content rating data, wherein the plurality of content rating data indicates interest-level of the plurality of the users relating to the content. (§§(0009))

Bookman does not explicitly disclose matching the content and the subscription information to form an aggregate content bit for the plurality of network nodes; creating a rating survey via the subscription information, the rating survey to maximize allocation of bandwidth, the rating survey including user data, the user data including one or more of user interest level relating to the content, user timing preference relating to receiving an/or consuming of the content, and observational profile information including automated observation and/or user-contributed observation.

Ellis teaches matching the content and the subscription information (Find Always The guide displays programs Similar that are similar to the selected program, or displays a list of attributes of the selected program and allows the user to choose from among them to find matching program see §§(0129)) to form an aggregate content bit for the plurality of network nodes (A family niche hub or other hub of the present invention may provide the user with an opportunity to enter personal profiles with different levels

of rating restrictions for various viewers (e.g., family members) and other personal preferences see ¶[0201]); creating a rating survey via the subscription information (If a program is selected, for example from listing screen 140 of FIG. 6 or from an interactive advertisement (e.g., 104A-C), the program guide may display, for example, Program Information screen 150, such as shown in FIG. 7. This screen may include the name of the program (possibly editorially shorted to fit into the screen space available), the rating of the program, the start time and run time of the program, the channel on which the program is being shown, and other details about the program, such as the price and package information see ¶[0128]); the rating survey to maximize allocation of bandwidth (Dedicated digital or analog channels, or at least an allocated portion of the available bandwidth in communications paths 24, may be used for the transmission of certain types of data (e.g., video-on-demand programs, chat messages, etc. see¶[0096]), the rating survey including user data; the user data including one or more of user interest level relating to the content (Rate Ratings are being Allows the user to rate this collected for this program, and to send that rating program see (¶ [0129] ); user timing preference relating to receiving an/or consuming of the content, and observational profile information including automated observation and/or user-contributed observation.

It would have been obvious to one of ordinary skill in the art, having the teachings of Bookman and Ellis before them at the time the invention was made to modify the interactive content distribution system of Bookman to include matching the content with subscription information, creating rating user data survey to allocation of bandwidth as taught by Ellis. One of ordinary skill in the art would have been motivated



to make this modification in order to provide an efficient and effective way to distribute contents over to network nodes in view of Ellis.

Bookman and Ellis do not explicitly disclose allocating the bandwidth according to the rating survey.

Alessi teaches allocating the bandwidth according to the rating survey (allocating bandwidth based on the user giving weight priority "Data from the transmitting end point may be sent to an optional rate converter. The rate converter allows available link-bandwidth to be allocated efficiently. More particularly, available bit rate ("ABR") or other calls are allocated available link-bandwidth according to weight-based priority scheme" see col.5 lines 44-49). Alessi further provides the advantage of protocol-independent error-control system that assists providing more reliable data transmission between end points (see abstract).

It would have been obvious to one of ordinary skill in the art, having the teachings of Bookman through Alessi before them at the time the invention was made to modify the content delivery system of Bookman to includes( or to use, etc) allocating the bandwidth according to the rating survey as taught by Alessi.

One of ordinary skill in the art would have been motivated to make this modification in order to provide more reliable allocate bandwidth for the content delivery system in view of Alessi.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Guang Li whose telephone number is (571) 270-1897. The examiner can normally be reached on Monday-Friday 8:30AM-5:00PM(EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Pwu can be reached on (571) 272-6798. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 15, 2008  
Guang Li  
Patent Examiner

/JEFF PWU/

Supervisory Patent Examiner, Art Unit

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